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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Written statement* submitted by the Pasumai Thaayagam Foundation, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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1801944

Please recycle

The Failure of the Government of Sri Lanka to Implement Its Commitments on Accountability in Human Rights Council Resolution 30/1*

The Government of Sri Lanka co-sponsored Human Rights Council (HRC) Resolution 30/1 in March 2015 and reaffirmed these commitments through co-sponsoring Resolution 34/1 in March 2017. The Government's commitments include the establishment and implementation of a comprehensive transitional justice process to help heal the country and allow victims to move beyond the suffering and destruction of the 26-year war that ended in 2009.

Unfortunately, by March 2017, the Government has made little progress on its commitments, prompting the UN High Commissioner for Human Rights to recommend that the Government, in cooperation with the HRC, declare a time-bound plan for implementing the main elements of its transitional justice commitments. If the Government does not take immediate action on establishing and publicizing their plan, the HRC, its member states and the Office of the UN High Commissioner for Human Rights (OHCHR) must take firmer steps to encourage Sri Lanka's progress on ensuring peace and stability in the country.

The Government's 25 key commitments in Resolution 30/1 covered a comprehensive range of transitional justice processes and mechanisms, including the meaningful consultation of victims and other stakeholders in planning and implementing all mechanisms[1] and the establishment of 'judicial and non-judicial measures.'[2] Such measures include '*inter alia*, individual prosecutions, reparations, truth-seeking, institutional reform, the vetting of public employees and officials, or an appropriately conceived combination thereof, in order to, *inter alia*, ensure accountability, serve justice, provide victims with remedies, promote healing and reconciliation, establish independent oversight of the security system, restore confidence in the institutions of the State and promote the rule of law in accordance with international human rights law with a view to preventing the recurrence of violations and abuses.'[3]

Sri Lanka agreed to undertake security sector reform through demilitarization, land returns, and the withdrawal of security forces from civilian activities. The Government also committed to implement legal reform, including constitutional reform, to achieve a devolved political settlement, reform of witness protection laws, criminalization of atrocity crimes and enforced disappearances, and repeal of the Prevention of Terrorism Act (PTA). The Government committed to preserve all evidence and to investigate and address ongoing human rights abuses, including attacks on civil society and sexual and gender-based violence and torture.

For accountability purposes, the Government's most important commitment was to 'establish a Judicial Mechanism with a Special Counsel to investigate allegations of violations and abuses of human rights and violations of international humanitarian law, as applicable; and affirms that a credible justice process should include independent judicial and prosecutorial institutions led by individuals known for integrity and impartiality; and further affirms in this regard the importance of participation in a Sri Lankan judicial mechanism, including the Special Counsel's office, of Commonwealth and other foreign judges, defence lawyers, and authorized prosecutors and investigators.'[4]

Three years after the HRC unanimously adopted Resolution 30/1, the Government of Sri Lanka has made minimal progress toward implementing their transitional justice promises. We would like to note the Government's limited progress in the following areas:

1. Although the Convention for the Protection of All Persons from Enforced Disappearances has not been domesticated, the Government acceded to it.

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1 Preambular Paragraph #15

2 ibid.

3 ibid.

4 Operative Paragraph #6

2. Consultation with victims and other stakeholders through the 2016 Consultation Task Force (CTF), although the Government has not endorsed or implemented the CTF's recommendations and has not undertaken further consultations.

3. An Office of Missing Persons (OMP) was legislated in 2016, but is not yet operational. The process did not involve consultations with victims, there is no mandated link to a judicial process, foreign funding and expertise is explicitly forbidden and the OMP is not required to share its findings with families of the missing. Though the President agreed to these families' call to publish a comprehensive list of people who surrendered during the last phase of the civil war—listing the names of all detainees or arrestees, those who are still in custody and their location of detention, and those who have been released and to whom they were released, no action has been taken yet.

4. Return of land stolen/occupied by security forces to their Tamil civilian owners has proceeded very slowly, with disagreements about how much land is held. Additionally, new land continues to be seized.

Any progress that has occurred has been thanks to steady pressure by international bilateral and multilateral mechanisms, such as the HRC. It is therefore imperative that the HRC and its members continue to pay close attention to Sri Lanka's transitional justice progress and urge the Government to take swift action in implementing its commitments.

Constitutional reform has stalled, little security sector reform has been undertaken—there have been no comprehensive vetting and lustration processes—and no truth-telling, reparations or judicial accountability mechanisms have been established. While the Government said that it has initiated various 'reconciliation' mechanisms, they are Colombo-based and were set up without victim consultations. Accordingly, they have not provided meaningful redress to actual victims of abuse, who primarily live in the North-East.

In addition to the lack of progress on reconciliation and transitional justice, the Government has not prevented ongoing human rights violations against the Tamil and Muslim communities as well as journalists, human rights defenders and political dissidents. The counter-terrorism apparatus remains in place, undiminished and unreformed, albeit less visible under the current government. Abductions, torture, sexual and gender-based violence,5 illegal land appropriation,6 state-sponsored population transfers that change the demography of Tamil areas, religious and cultural intolerance,7 language and economic discrimination, political exclusion and gerrymandering, appropriation of timber, agricultural land, minerals and resources of the sea under the protection of the state8 are all continuing under the current government.

These abuses are exacerbated by the presence of one of the highest concentrations of military forces in the world by one of the largest militaries (per capita) in Asia, most of whom remain deployed in the Tamil and Muslim areas in the North-East. The nearly 100% Sinhalese security forces have committed torture, sexual and gender-based violence, human smuggling and trafficking,9 economic strangulation, monetary extortion and surveillance of all civilian activities. These abuses against the Tamil population, which have taken place in the aftermath of mass atrocities, are aimed at the destruction of the Tamil community within our own 'area of historical habitation'10 on the island.

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5 Systematized abduction, torture & sexual violence are documented in reports by the International Truth & Justice Project such as http://www.itjpsl.com/assets/ITJP_unstopped_report_final.pdf which all note the involvement & often physical presence of senior officers. Also HRW's latest report https://www.hrw.org/report/2018/01/29/locked-without-evidence/abuses-under-sri-lankas-prevention-terrorism-act

6http://www.tamilguardian.com/files/File/BTF/Land%20occupied%20by%20Security%20forces%20in%20Northern%20province.pdf

7 http://sangam.org/wp-content/uploads/2016/08/BTF-Land-grab-and-cultural-colonisation-of-the-Tamil-land-in-Sri-Lankav-v7.pdf

8 https://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/justice-denied.pdf

9 http://www.itjpsl.com/assets/ITJP_unstopped_report_final.pdf

10 1987 Indo-Lanka Accord https://peacemaker.un.org/sites/peacemaker.un.org/files/IN%20LK_870729_Indo-Lanka%20Accord.pdf

The March 2017 call by the High Commissioner for Human Rights for Sri Lanka to announce a time-bound action plan, which was echoed by several countries, remains unfulfilled. Mothers of disappeared and missing persons have been protesting on the roadside for over a year, demanding information about the whereabouts and fates of their children. Protests against the illegal acquisition of land are also frequent and widespread. Moreover, Tamil politicians and civil society note the lack of progress on transitional justice, reconciliation and accountability at every opportunity.

Pasumai Thaayagam Foundation and our associated NGOs urge the HRC and its members to strongly act in the absence of actual progress on transitional justice by the Government, including by executing travel bans on accused war criminals, implementing asset freezes on accused war criminals and human rights abusers, and seeking detentions and prosecutions when accused war criminals travel to or through their countries. In addition, as Sri Lanka's long-awaited constitutional reform drags on, we ask concerned governments and human rights bodies to push for the incorporation of transitional justice provisions in any new constitution that may emerge, along with strong political devolution.

We urge the UN High Commissioner for Human Rights to issue specific alternative measures to address Sri Lanka's non-compliance with Human Rights Council Resolutions 30/1 and 34/1, including a possible referral to the UN Security Council.

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*British Tamils Forum (BTF), The United States Political Action Council (USTPAC), NGOs without consultative status, also share the views expressed in this statement.

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Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Joint written statement* submitted by Al Mezan Centre for Human Rights and the World Organisation against Torture, non-governmental organizations in special consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Please recycle

Impunity for torture, ill-treatment and related practices in Israel*

Al Mezan Centre for Human Rights, World Organisation Against Torture and Lawyers for Palestinian Human Rights (the Organizations) address the Council concerning the Israeli government's policy and practice in regard to torture and ill-treatment, which is delineated in 23 serious incidents of alleged torture and ill-treatment cited in the Organizations' joint urgent action to UN Special Procedures (see below) and consolidated by the recent landmark Israeli High Court of Justice (HCJ) ruling in the Abu Ghosh case.

During the January 2018 third Universal Periodic Review of Israel, a large number of states explicitly addressed Israel's practices and policies that relate to and facilitate torture and ill-treatment. Within the format of state recommendations to the country under review, the states called on Israel to address its widespread use of administrative detention and child detention; effectively ban torture in all its forms; ratify the optional protocol to the UN Convention against Torture (UN CAT); or to integrate the UN CAT definition of torture and the Committee against Torture recommendations into Israeli domestic legislation and policy.1

In August 2017, the Organizations submitted an urgent appeal to UN Special Procedures that contained evidence of 23 incidents of alleged torture and cruel, inhuman or degrading treatment or punishment (CIDTP) of Palestinian residents from Gaza that took place between 2014 and 2017 during their arrest and detention. Of the 23 alleged serious incidents of abuse at the hands of Israeli State agents, 16 individuals remain in Israeli prisons, and seven have been released back into Gaza.

The facts described in the urgent action are illustrative of a pattern of widespread and systematic use of torture and CIDTP against Palestinian detainees in general, including residents of the Gaza Strip, held in Israeli custody. This practice is emboldened by Israel's flawed legal and judicial system that enables rather than deters the use of torture and CIDTP by failing to hold perpetrators to account. For example, of the 23 individual cases addressed in the urgent action, 11 individuals submitted criminal complaints to the Inspector for Interrogee Complaints (IIC, the Justice Ministry agency dealing with complaints of torture and CIDTP by the Israeli security agency (ISA)), and eight individuals submitted criminal complaints to the Military Advocate General alleging misconduct and abuse by soldiers during the ground invasion of Gaza in 2014. The IIC has not opened any investigations and closed two of those files. The Military Advocate General opened three investigations, but closed two of those, and in addition closed two further files without investigation, of the 23 cases.

In one case, a young man with an intellectual and psychosocial disability (schizophrenia) was denied access to legal counsel for 16 days after his arrest, and then declared unfit for trial and subsequently held in isolation for six months, during which time his health dramatically deteriorated. He is currently being held in the regular prison section of Al Ramla instead of being returned to Gaza or placed in a hospital, and has been informed through his lawyer that he will be tried.

The 23 cases in the urgent action illustrate the unacceptable dangers faced by Palestinians held in Israeli military custody that are caused in large part by Israel's structurally deficient legal and accountability system that purposefully shields torture and CIDTP perpetrators and allows for blanket impunity. It is worth noting that after the submission of at least 1,100 complaints to the IIC since 2001, the agency recently opened its first criminal investigation.2 It is unclear

1 See, Human Rights Council 'Draft report of the Working Group on the Universal Periodic Review' (Israel) 25 January 2018 (A/HRC/WG.6/29/L.12) Available here: https://www.upr-info.org/sites/default/files/document/israel/session_29_-_january_2018/a_hrc_wg.6_29_l.12.pdf

2 The Public Committee Against Torture in Israel, 'In spite of firm statements against the use of torture, Israel's High Court of Justice refuses to recognize the torture used in interrogation'. Available here: http://stoptorture.org.il/cwsd.php?bXYxJzQ0JA__/PzE_/S21reW12eyJTfmRgYCBRcn9hbHBq!1dCPyU2PD8iJiE5LXxxYg__.pdf

whether the investigation will result in a change to practice or policy concerning accountability for the use of torture and ill-treatment in Israel. Fundamentally, it is a system that prevents any meaningful deterrence and therefore enables, or even encourages, the repetition of torture and ill-treatment practices.

This is most clearly indicated by Israel's HCJ decision in 1999 to effectively limit the criminal liability of interrogators using violence to interrogate prisoners.3 Although the Court stated that those under questioning must not be subjected to torture or cruel and inhuman treatment, recognizing that respect for dignity and basic rights must be adhered to,4 it nonetheless affirmed that Israeli interrogators would be exempt from criminal sanctions in a situation of 'necessity' as per the Israeli Penal Code. This legal loophole effectively permits the commission of crimes if the interrogator believes that in doing so the imminent loss of lives may be prevented.5 Such protection of Israeli Security Agents extends to criminal and civil responsibility.6 Subsequently, the use of the "necessity defense" has been reported in dozens of interrogations every year, and is therefore indicative of a systemic disregard for the absolute prohibition of torture and CIDTP provided by international law.7

The construction of institutionalized impunity for the use of torture and CIDTP has been consolidated by the recent landmark HCJ decision, in December 2017, to uphold the decision of Israel's Attorney General not to open a criminal investigation into the cases of the ISA personnel who tortured a Palestinian man, Asad Abu Ghosh. The ruling is, in effect, a refusal of the Court to recognize some of the practices used by Israeli State agents as torture, despite their consideration as such under international law8. This decision further consolidates protections for perpetrators of torture and undermines the absolute prohibition of torture in international law. In parallel, the State of Israel has still not promulgated a law criminalizing torture, in spite of its public commitment to do so in May.

Since the start of its occupation in 1967, Israel has used imprisonment of members of the Palestinian community, in particular of individuals engaged in resisting the occupation, as a political tool to repress and maintain control over Palestinian society. The Organizations note as well that prisoners continue to be deprived of access to counsel and visitation for the days and weeks of the interrogation, and that trials continue to be replete with secret evidence, barring the way for an effective discussion of the interrogation techniques routinely used. Thus, safeguards against torture are extremely limited, permitting this practice to flourish. Imprisonment is intended to undermine their ability to oppose the Israeli occupation by criminalizing political affiliation and activities, obstruct the daily lives and political and social fabric of Palestinian communities, and facilitate the use of different methods of torture and CIDTP to target and intimidate individuals and communities, including children. Ahed Tamami9, a 16-year-female activist from the village of Nabi Saleh in the occupied West Bank, is a recent victim of this policy. She is one of 313 children currently in military detention.10

3 Public Committee Against Torture v. Israel HCJ 5100/94, the Supreme Court sitting as the High Court of Justice

4 ibid. Paragraph 18

5 Section 34 of Israeli Law No. 626/1996, Penal Law

6 UN Committee Against Torture, 'Concluding Observations of the Committee Against Torture CAT/C/ISR/CO/4' (2009) para 14 <http://www2.ohchr.org/english/bodies/cat/docs/cobs/CAT.C.ISR.CO.4.pdf> accessed 20 May 2017

7 Public Committee Against Torture in Israel, 'Stop Torture: Independent Report to the UN Committee Against Torture Towards the Review of the Fifth Periodic Report on Israel' (2016) 6 <http://stoptorture.org.il/wp-content/uploads/2016/06/INT_CAT_NGO_ISR_23475_E-Last.pdf> accessed 20 May 2017.

8 See esp. Paragraph 36 in the HCJ ruling – "the definition of specific methods as "torture" depends on concrete circumstances, even when one is discussing interrogative methods explicitly recognized as "torture" by international law."

9 Amnesty International, Israel/oP: Israeli authorities must release Ahed Tamimi immediately. Available here: https://www.amnesty.org/en/press-releases/2018/01/israelopt-israeli-authorities-must-release-ahed-tamimi-immediately/

10 Defence for Children International Palestine, 30 November 2017

The policies and practices pursued by the Israeli authorities concerning patient access to medical care in Gaza leave these individuals extremely vulnerable to degrading treatment and abuse. Al Mezan's recent report on the issue[11] highlights the cases of 20 patients, including 11 women and three children, who died after their permit requests to exit Gaza for medical care were delayed or rejected by the Israeli authorities. Increasingly, the processing of permit requests is prolonged beyond the date of the hospital appointment or the permit is denied, leaving patients to face a serious deterioration in their health condition, or death. Further, the Israeli government's control over Gaza's border crossings with Israel and regulation of movement in and out, often includes the detention and ill-treatment of patients, and coercion by Israeli security agents to give information in exchange for crossing permits.

By imposing a system that severely restricts access to healthcare and at times includes coercive measures, Israel is in serious violation of its obligations as an occupying power and a duty bearer under international law, notably concerning the fundamental right to life and the absolute prohibition on the use of torture and CIDTP.

Within the above-described context, we welcome the focus of a large number of states during the Universal Periodic Review on the urgent and critical human rights issue of Israel's detention policies and practices applied to Palestinians. We submit that it is vital and long overdue that Israel undertakes a substantial reform of its detention policies and practices that often amount to permitting acts of torture and CIDTP with impunity. We urge states to engage constructively with Israel for the purpose of effectively undertaking this necessary reform, with the crucial first step being to fully integrate the UN CAT definition of torture into domestic legislation with a view to ensuring accountability of perpetrators of abuse and torture. We urge states to denounce the rulings that sanction torture practices and to encourage international oversight, such as country visits and inquiries by international mechanisms, including the UN CAT and UN Special Procedures, in order to investigate these practices.

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*Lawyers for Palestinian Human Rights, NGO without consultative status, also shares the views expressed in this statement.

11 The 20 deaths cited are those that Al Mezan was able to document—the figure is not to be taken as inclusive of all deaths in 2017. See page 21 of Al Mezan's report, 'Medical Care Under Siege: Israel's Systematic Violation of Gaza's Patient Rights'. Available here: http://mezan.org/en/post/22333